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Strassheim Printing Co., Inc. and Graphic Communications Conference Local 4-C a/w International Brotherhood of Teamsters. Case 4-CA-34892

January 11, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on September 5, 2006, the General Counsel issued the complaint on October 27, 2006, against Strassheim Printing Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On November 27, 2006, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on November 28, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by November 13, 2006, all the allegations in the complaint may, pursuant to a motion for default judgment, be found by the Board to be true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 14, 2006, notified the Respondent that unless an answer was received by November 21, 2006, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, until on about June 30, 2006, the Respondent, a Pennsylvania corporation with a facility in

Philadelphia, Pennsylvania, was engaged in printing books, periodicals, and other printed materials. During the 12-month period ending June 30, 2006, the Respondent, in conducting its business operations described above, sold and shipped goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Graphic Communications Conference Local 4-C a/w International Brotherhood of Teamsters, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, William Strassheim and Rachael Strassheim held the positions of the Respondent's president and office manager, respectively, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All pressmen, offset assistants, and offset preparatory employees employed by Respondent at its 305 N. 15th Street, Philadelphia, Pennsylvania facility, excluding all supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from April 24, 2003 through April 30, 2006 (the Agreement).

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about June 30, 2006, the Respondent ceased its operations.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

Since on or about July 7, 2006, the Respondent failed to continue in effect the terms and conditions of the Agreement by failing and refusing to make severance payments to unit employees it laid off after ceasing its operations.

The Respondent engaged in the conduct just described without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful failure, since July 7, 2006, to make severance payments to the unit employees laid off after the Respondent ceased its operations at its Philadelphia, Pennsylvania facility on June 30, 2006, we shall order the Respondent to make the laid-off employees whole in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To remedy the Respondent's unlawful failure to give the Union prior notice of its decision to cease operations at its Philadelphia, Pennsylvania facility and an opportunity to bargain over the effects of that decision on the unit employees, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our order with a limited backpay requirement designed both to make whole

the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).¹

Thus, the Respondent shall pay its laid-off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to cease its operations on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the laid-off employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Strassheim Printing Co., Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

(a) Failing to continue in effect the terms and conditions of the April 24, 2003 through April 30, 2006 Agreement (the Agreement) by failing and refusing to make severance payments to unit employees it laid off after its decision to cease operations on June 30, 2006.

(b) Failing to give Graphic Communications Conference Local 4-C a/w International Brotherhood of Teamsters prior notice of its decision to cease operations at its Philadelphia, Pennsylvania facility and an opportunity to bargain over the effects of that decision on the employees in the following unit:

All pressmen, offset assistants, and offset preparatory employees employed by Respondent at its 305 N. 15th Street, Philadelphia, Pennsylvania facility, excluding all supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of its decision to cease operations at its Philadelphia, Pennsylvania facility on June 30, 2006, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to make severance payments to unit employees laid off after the Respondent ceased its operations on June 30, 2006, with interest, in the manner set forth in the remedy section of this decision.

(c) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appen-

dix"² to the Union and to all unit employees employed at the Philadelphia, Pennsylvania facility on or after June 30, 2006.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 11, 2007

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

MAILED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to continue in effect the terms and conditions of the April 24, 2003 through April 30, 2006 Agreement by failing and refusing to make severance payments to employees laid off after our decision to cease operations on June 30, 2006.

WE WILL NOT fail to give Graphic Communications Conference Local 4-C a/w International Brotherhood of

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Teamsters prior notice of our decision to cease operations at our Philadelphia, Pennsylvania facility and an opportunity to bargain over the effects of that decision on the employees in the following unit:

All pressmen, offset assistants, and offset preparatory employees employed by us at our 305 N. 15th Street, Philadelphia, Pennsylvania facility, excluding all supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over the effects of our decision to cease operations at our Phila-

delphia, Pennsylvania facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our failure to make severance payments to unit employees laid off after ceasing our operations on June 30, 2006, with interest.

WE WILL pay unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

STRASSHEIM PRINTING CO., INC.